

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>  <div style="text-align: center;"><b>Plaintiff,</b></div>  <div style="text-align: center;"><b>vs.</b></div>  <b>SEAN M. BRANNEN,</b>  <div style="text-align: center;"><b>Defendant.</b></div>	) ) ) ) ) ) ) ) ) )	<b>CASE NO. 8:07CR167</b>          <b>TENTATIVE FINDINGS</b>
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The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 32). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement provides that the Defendant, Sean M. Brannen, should receive a 2-level downward departure under U.S.S.G. § 2G2.2(b)(1). Section 2G2.2(b)(1) allows this decrease in an offense level where the base offense level is 22 under U.S.S.G. § 2G2.2(a)(2), the conduct was limited to receiving or soliciting material involving the sexual exploitation of a minor, and the defendant did not intend to traffic in or distribute such material. The PSR did not apply § 2G2.2(b)(1), and Brannen objects to the non-application of this subsection.

Also, the plea agreement precludes the application of U.S.S.G. 2G2.2(b)(4), which allows a 4-level increase in a defendant’s offense level where the material in question involves sadistic or masochistic conduct or other depictions of violence. The PSR applies this subsection for the reason stated in ¶ 29, and Brannen objects to the 4-level increase in ¶ 29.

Absent unusual circumstances, the plea agreement will be upheld.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 32) are granted;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 4<sup>th</sup> day of February, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge